ARATHOON & SONS v. BUAN LEE SENG LTD.

[A. C. J. (Jobling J.) September 27, 1948]

[Singapore — District Court Appeal No. 140, 1948]

Landlord and Tenant — Control of Rent Ordinance, 1947, s. 14(1)(f) and (m) — Suitable alternative accommodation.

This was an appeal against the decision of the District Judge dismissing the plaintiff's claim for possession of a godown. The plaintiff-appellant claimed possession of the premises on the ground that he required the godown for his own use, but it appeared that no notice had been given as required under s. 14(1)(f) of the Control of Rent Ordinance 1947. The learned District Judge found on the facts that suitable alternative accommodation was not available to the tenant.

Held: (1) that paragraph (m) of s. 14(1) of the Control of Rent Ordinance can only be relied on when the circumstances in any particular case are not provided for in paragraphs (a) to (l) of the section; (2) that in this case the appellant's circumstances were not those provided for in paragraph (f) and that he had rightly proceeded under paragraph (m); (3) that on the facts it appeared that no suitable alternative accommodation was available to the tenant and therefore the learned District Judge was right in refusing the application.

APPEAL from the Civil District Court.

N. A. Mallal for the appellants.

Sir Roland Braddell for the respondent.

Cur. Adv. Vult.

Jobling J. : — This is an appeal against the decision of the District Judge, Singapore, dismissing the plaintiff's claim for possession of certain premises namely a godown situated at 20 Magazine Road.

The plaintiff/appellant claimed possession of the premises on the ground that he requires the godown for his own use, that he has no other godown and the defendant has another godown besides the premises in question. Paragraphs (f) and (m) of section 14(1) of the Control of Rent Ordinance 1947 were cited as giving the Court authority to make the order claimed.

In this Court the appellant abandoned his claim under paragraph (f) of section 14(1) and relied on paragraph (m) but Sir Roland Braddell for the defence has argued that paragraph (m) has no application here since plaintiff states he requires the godown for his own use and this brings the matter within paragraph (f).

The two paragraphs in question read as follows :—

"14 — (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely:—

(a) to (e) .....

(f) where the owner of the premises requires the same for occupation by himself or any member of his family or any person for whom he holds the premises in true and —

(i) there has been no change by purchase in the ownership of the premises since the 15th day of February 1942; or

(ii) the tenancy has been determined by not less than one year's notice to quit and there has been no change by purchase in the ownership of the premises, within one year next preceding the date of such notice:

Provided that an order or judgment shall not be made or given on any ground specified in this paragraph if the Court is satisfied that having regard to all the circumstances of the case, including the question whether other accommodation is available for the owner or the tenant, greater hardships would be caused by granting an order or judgment than by refusing to grant it;

(g) to (l) .....

(m) in any other case where the Court considers it reasonable that such an order or judgment be made or given and is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order or judgment takes effect."

It is clear that the paragraphs (a) to (l) of section 14(1) are designed to give the landlord the right to possession in the circumstances stated and the submission for the respondent is that the words "in any other case" at the beginning of paragraph (m) restricts the application of that paragraph to circumstances which are not described in paragraphs (a) to (l). In this case it is submitted that appellant's endorsement of his summons shows that the circumstances are those described in paragraph (f).

Mr. Mallal has submitted that paragraph (m) is a general provision giving the Court discretion to make orders for possession where hardship would otherwise result. I think the plain meaning of the words "in any other case" is that paragraph (m) only comes into operation when the circumstances in any particular case are not provided in paragraphs (a) to (l).

The only point therefore is, do the circumstances in this case come within any of these paragraphs?

The circumstances described and admitted by plaintiff/appellant are :—

(1) that he reasonably requires the premises for his own use;

(2) that there has been a change of ownership since 1942;

(3) that the tenancy has not been determined by one year's notice to quit;

(4) that greater hardship would not be caused by granting the order than by refusing to grant it.

(1), (2) and (4) are circumstances described in paragraph (f) but (3) is the negative of one of the essential requirements mentioned in paragraph. Indeed it is the plaintiff's whole case that because of the lack of this requirement he does not come within paragraph (f) and has had to make his application under paragraph (m).

With this view I cannot but agree and I find therefore that appellant s circumstances are not those provided for by paragraph (f) and that he has rightly proceeded under paragraph (m).

The learned District Judge found that on the evidence it would be reasonable to make the order for possession for refused the application as he was not satisfied that suitable alternative accommodation for the respondent was available.

Mr. Mallal has said everything that could be said on appellant's behalf but the evidence is clear that respondent is making some use of all the accommodation at his disposal for purposes of his business and no alternative accommodation has been suggested. The only suggestion appellant makes is that respondent should rearrange his goods and his operations so as to confine them in a smaller space and leave the premises in dispute free for appellant.

The learned District Judge inspected all respondent's business premises and was not satisfied that suitable alternative accommodation to the premises in dispute was available.

On the evidence I cannot see how he could have come to any other conclusion.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Mallal & Namazie; Braddell Bros.*

REX v. NG HIONG.

[A. Cr. J. (Gordon-Smith Ag. C.J.) October 15, 1948]

[Singapore — Special Case No. 5 of 1948]

Common Gaming Houses Ordinance (Cap. 30), ss. 4, 6, 7, 9, 14 and 15 — Presumptions under the Ordinance — Charge of being in possession of public lottery ticket — Whether it is necessary that there should be a search warrant.

In this case it appeared that the accused was stopped by a Police corporal on suspicion and searched. On him were found what was subsequently proved to be two chap-ji-ki slips and he was later charged for possession of them. The learned Magistrate did not call on the accused for his defence but acquitted him and stated a case. The case stated was that (a) Possession of the said staking slips did not amount to buying tickets in a public lottery, (b) the failure to obtain a search warrant vitiated the whole prosecution in that no presumption either under s. 7(2) or under s. 9 Cap. 30 could arise in the circumstances.

Held: (1) the presumption in s. 7(2) of the Common Gaming Houses Ordinance has no reference to any search warrant and arose when lottery tickets are found on the accused, as in this case; (2) the learned Magistrate therefore erred in not calling on the accused for his defence.

SPECIAL CASE STATED.

A. V. Winslow (D. P. P.) for the Crown.

B. H. Chia, Amicus Curiae.

Cur. Adv. Vult.

Gordon-Smith Ag. C.J. : — This decision is on a case stated by the Magistrate of the Second Police Court under the provisions of the Criminal Procedure Code section 317. It raises matters of some importance and concerns the Common Gaming Houses Ordinance (Cap. 30).

The accused was charged under section 7(1) in that on the 3rd May, 1948 at 9.25 a.m. at the junction of Duku Road and Everitt Road he did have in his possession two chap-ji-ki public lottery staking slips. The undisputed facts in the case are that the accused was in conversation with another Chinese when a Police corporal, on routine patrol, being somewhat suspicious of the accused, stopped and searched him. On him he found what was subsequently proved to be two chap-ji-ki slips and he was charged later, as set out above.

At the trial a chap-ji-ki expert gave evidence describing this kind of lottery and the system on which it is run daily and stated that these two paper slips were tickets shewing stakes of $2.00 and $4.00 respectively. There was no date on them because, so the expert said, the lottery is run daily and he could not say whether the money indicated had been actually staked (paid over) or not. Apparently the lottery is run on a system of mutual trust.

The Magistrate did not call on the accused for his defence, acquitting him and agreeing to state a case.

The case stated is that :—

(a) possession of the said staking slips did not amount to buying tickets in a public lottery;

(b) the failure to obtain a search warrant vitiated the whole prosecution, in that no presumption either under s. 7(2) Cap. 30 or under s. 9 Cap. 30, could arise, in the circumstances.

It is obvious that the proceedings having nothing whatsoever to do with a common gaming house, no presumptions arose under sections 14 and 15 of the Ordinance.

It is similarly obvious that no presumption arises by virtue of section 9 of the Ordinance.

The only possible presumption is that contained in section 7(2).

Section 7 reads as follows :—

7. (1) Any person who, either personally or by an agent, pays or deposits any money or money's worth to or with any person concerned in the business of a common gaming house, as a stake or for or in respect